IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1794 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
MARCH 12, 2007.

The petition is to be disposed of finally at the stage of admission itself. Nobody is appearing for the respondents though they are served.

The advocate has filed power for respondents No. 1 to 4 but said advocate is not present. Even earlier i.e. when notice before admission came to be issued, there was no appearance and hence fresh notice indicating that writ petition would be disposed of finally at the stage of admission itself came to be issued. Said notice is served and again there is no appearance.

Heard Shri Khan, learned counsel for the petitioner – original defendant No.1. He points out that suit filed by Respondents No. 5 to 12 is for challenging the sale deed dated 5.9.2003 executed in favour of defendant No.1

- petitioner by Respondent No.1. He states that the present petitioner as also Respondents No. 1 to 4 are party defendants before the lower Court. The reply filed to temporary injunction application was adopted by original defendants No. 1 and 5 as their written statement. Thereafter in order to point out title in favour of his vendor, defendant No. 1 moved an application for amendment. The same has been rejected. He contends that order shows total non-application of mind.

I have perused the impugned order. Suit filed is of the year 2000 and in that suit by moving amendment application, present petitioner has tried to point out that his vendors were not parties to any earlier partition suit and he has also pointed out how the property devolved from its original owners to vendors and how his vendors have dealt with it. It is, therefore, apparent that amendment is essential. He has further stated that as the facts are essential, amendment should be allowed. The Court below has rejected it on the ground that the pursis adopting written statement was signed by defendants No. 1 and 5 both while application

for amendment is signed by present petitioner - defendant No.1 only. It is further observed that there is nothing on record to point out why such amendment could not be pleaded earlier.

It is apparent that sale deed obtained by present petitioner – defendant No.1 is distinct and separate and therefore he can point out facts relevant and for that purpose he can also move an application for amendment. Similarly, the suit is of the year 2000 and the facts sought to be incorporated by amendment are not irrelevant but are essential. It is apparent that questions on those lines could have been put even otherwise by producing certified copies on record.

In the circumstances, I find that the impugned order cannot be sustained and the same is, therefore, quashed and set aside. Defendant No.1 – present petitioner is permitted to amend his written statement within a period of four weeks from today. The other parties to the suit shall be at liberty to amend their respective pleadings within a further period of two weeks thereafter.

Considering the fact that the suit is of the year 2000, the suit is expedited and the Court below is directed to decide said suit as early as possible and in any case within a period of eight months from the date of communication of this order to it.

Writ Petition is disposed of. Rule accordingly. However, in the facts of present case, there shall be no order as to costs.

JUDGE

*GS.